

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
FRANK J. KONYN )  
For Review of Order No. 84-05 of the )  
California Regional Water Quality )  
Control Board, San Diego Region. )  
Our File No. A-351. )

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ORDER NO. WQ 85-9

BY THE BOARD:

On March 5, 1984, the California Regional Water Quality Control Board, San Diego Region (Regional Board) adopted Board Order No. 84-05, prescribing waste discharge requirements for Frank J. Konyon Dairy, TMY Farms, and City of San Diego. Due to a malfunction of the public address system, the tape recording of oral presentations made to the Regional Board could not be reviewed. The Regional Board reheard the matter on June 4, 1984 and affirmed its March 5, 1984 adoption of Order No. 84-05.

Frank Konyon (petitioner) appealed the Regional Board action to the State Board on April 2, 1984 and reaffirmed the petition on June 8, 1984. The petition was deemed complete on August 17, 1984. This matter was heard by the State Board in a workshop on April 3, 1985. In addition, a site visit and evidentiary hearing were conducted on June 7, 1985. Although the time for formal disposition of the petition has expired, this order is based on our ability to review the matter on our own motion (Water Code Section 13320).

I. BACKGROUND

The Konyon Dairy is located in the San Pasqual Valley in north San Diego County. The San Dieguito River flows nearby and empties into Lake

Hodges 3.5 miles downstream. Lake Hodges serves as a domestic water supply for almost 50,000 persons. The dairy is situated in approximately 58 acres of land.

Approximately 500 cows are located at the dairy. The dairy is comprised of a milk barn located downslope from the crown of a hill. There are adjacent corrals upslope from the milk barn and also corrals at other locations on the dairy. There is also a calf-raising facility some distance from the milk barn. Runoff from the upslope corrals drains to the milk barn area. Runoff from the other areas does not. The calf-raising facility and a large manure pile are each adjacent to different drainage channels which cross TMY Farms and empty into the San Dieguito River. The majority of the dairy waste at the Konyn Dairy is generated in the milk barn area. The milk barn wastewater flows result primarily from the washing of the cows. The Regional Board has estimated that some 36,000 gallons of wastewater per cow per year are generated in the milk barn washing area. Corral runoff results from precipitation or other water flow coming into contact with manure in corral areas. Flows from the corral runoff are estimated at 1,850 gallons per cow per year. Both the washwater and the runoff have high total dissolved solids and nitrogen levels.

Frank Konyn had leased 1,200 acres of land from the City of San Diego (City) for his dairy operation since 1962. In 1976, the City placed all of the land in the San Pasqual Valley out to public bid. Konyn and TMY Farms each submitted bids for the lease of the 1,200 acre site and the City attempted to work out an agreement which would accommodate both parties. Under the agreement, Konyn would change his dairy from a self-contained operation to a

dry lot operation. Konyn would withdraw his bid for all but 58 acres of the land and the balance of acreage would be leased to TMY Farms, Inc. In return, TMY Farms, Inc. agreed to dispose of barn wastewater generated by the Konyn Dairy. Relying on these promises, Konyn withdrew his bid on the entire 1,200 acre site and bid instead on the 58 acres. Subsequently, the City entered into a lease with TMY Farms for the remaining acreage.

Disposal of wastewater was an important consideration for Konyn Dairy in giving up acreage, as the dairy uses over 30,000 gallons of water per day. Since 1966, wastewater from the milk barn and adjacent upslope corrals was carried in a pipe away from the barn, a distance of several hundred feet and used to flood irrigated pasture lands.

The Regional Board has regulated dairies since the mid-1970's in an effort to assure that discharge of dairy wastes did not degrade surface or ground waters. The Regional Board has issued waste discharge requirements to all dairies in the San Diego Region. On December 31, 1976, the Regional Board adopted Order No. 76-71 prescribing requirements for the Konyn Dairy. The order prohibited discharge of dairy wastes to surface waters. A Regional Board staff inspection on December 30, 1980 found a direct discharge of dairy wastewater into the San Dieguito River. Staff also found a discharge of wastewater from a calf-raising facility to a pasture area that drains to the San Dieguito River. Accordingly, Cleanup and Abatement Order No. 81-03 was issued to Konyn Dairy requiring immediate remedial action to eliminate discharges to the river. The Order also called for a time schedule from Konyn. Konyn Dairy demanded that TMY Farms meet its contractual agreement to legally dispose of the wastewater.

On February 23, 1981, the Regional Board referred the matter of ongoing violations of Order No. 76-71 and noncompliance with Cleanup and

Abatement Order No. 81-03 to the State Attorney General's Office for further enforcement action. On May 28, 1981, at a preliminary injunction hearing the Superior Court for the State of California, County of San Diego, found that there had been a preexisting agreement between TMY Farms, Inc. and Konyn Dairy in which TMY Farms, Inc. had agreed to accept the responsibility of dispersing in a legal method the milk barn dairy wastewater generated by the Konyn Dairy operation. The court ordered TMY Farms, Inc. to take all steps necessary to assure that milk barn wastewater discharged from the Konyn Dairy did not flow into the San Dieguito River or its tributaries.

In 1983, the Court of Appeal affirmed the 1981 preliminary injunction. This injunction essentially makes TMY Farms responsible for assuring that the milk barn wastewater from Konyn Dairy does not flow into the San Dieguito River.

On March 5, 1984, the Regional Board adopted revised waste discharge requirements, Order No. 84-05, naming the Konyn Dairy, TMY Farms and the City of San Diego.

Order No. 84-05 defines two types of waste by source category as follows:

1. Milk Barn Washwater shall include all water used in cow washing, equipment and barn washdown, and feed ramp flushing that is discharged via the pipe from the milkbarn to TMY Farms' property in accordance with the Court of Appeal decision affirming the Order granting the preliminary injunction discussed in Findings 6 and 7 of Order No. 84-05. (Emphasis added.)

2. Wastewater shall include but not be limited to any precipitation (rain or snow) which comes in contact with corral areas and stockpiled manures and any water not defined as "milk barn washwater".

The Regional Board has indicated its purpose in adopting Order No. 84-05 was threefold:

1. The waste discharge requirements were revised to reflect the court decision that TMY Farms was responsible for the disposing of milk barn wastewater.

2. The waste discharge requirements were revised to name Konyon Dairy as the party responsible for the disposal of dairy wastes other than the milk barn wastewater. These wastes include corral and manure stockpile runoff.

3. The waste discharge requirements were also revised to name the landowner, the City of San Diego. The City is required to enforce provisions of the lease agreements to maintain facilities and to prevent violations of the order.

## II. CONTENTIONS AND FINDINGS

From a review of the record, including the transcript of our hearing on June 7, 1985, we have concluded that there remain two issues appropriate for our review:<sup>1</sup>

1. Who bears responsibility for the various discharges at the dairy.
2. Who bears responsibility for certain monitoring requirements in the Regional Board order.

1. Contention: Both petitioner and TMY Farms seek to limit their responsibility over discharges at the site.

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<sup>1</sup> To the extent the petition itself raised additional issues, they will not be reviewed since they fail to raise substantial issues. (See Title 23, California Administrative Code, Section 2052(a)(1).)

Finding: The record before the Regional Board was less than clear regarding the issue of who bears responsibility for discharges at the site. However, evidence presented at the June 7, 1985, hearing enables us to reach the following conclusions regarding responsibility.

1. All wastewater that is collected in the milk barn area and discharged via a pipe to land leased by TMY Farms is the responsibility of TMY Farms. This wastewater includes milk barn washwater and corral runoff which comes from the existing adjacent, upslope corrals. In this regard, we reject TMY Farms arguments that it should not be responsible for any corral runoff, even from the adjacent corrals. It is clear that the latter runoff has historically been collected in the milk barn area and discharged via the pipeline. Such was the situation when TMY agreed to accept wastewater from the pipeline. TMY should be responsible for the runoff from the adjacent upslope corrals existing in 1976.

2. All other wastewater generated on the dairy, including runoff from manure piles, corrals not adjacent to the milk barn, and the calf-raising facility are the responsibility of Konyon Dairy.

We will amend Order No. 84-05 to more clearly set forth this delineation.

2. Contention: Since the Konyon Dairy has no irrigation system and TMY Farms does, Reporting Requirements Nos. 2 and 3 should be the responsibility of TMY Farms, not the Konyon Dairy.

Finding: Reporting Requirement No. 2 requires Konyon Dairy to comply with the Monitoring and Reporting Program. The Monitoring and Reporting Program requires Konyon Dairy to make "daily estimates of wastewater flow and flow discharged through irrigation system, and...a record of the quantity and

type of waste hauled for disposal and the point of disposal." Under the terms of the program, Regional Board staff collects and transports wastewater samples to an approved laboratory, while the costs remain with Konyon Dairy. The Regional Board notes that the monitoring requirements of Order No. 84-05 are the same as the monitoring programs required of every other dairy in the San Diego Region. We agree with the Regional Board that Konyon Dairy is the generator of the dairy wastes. As such, the Dairy has control over the type of wastes discharged on and off the dairy property. The dairy also controls the pipeline from the milk barn to TMY Farms and as such can make measurements at the pipeline. We find the Regional Board properly assigned the responsibility of monitoring the characteristics of dairy wastes such as corral runoff and milk barn washwater to Konyon Dairy. However, we also note the Regional Board's testimony that the Regional Board is presently bearing the responsibility for any off-site monitoring.

Petitioner also contends that TMY Farms and not Konyon Dairy should be responsible for submitting a Waste Management Report. The Regional Board order requires:

"A Waste Management Report certifying the adequacy of each component of the solid and liquid waste disposal operation shall be submitted by Konyon Dairy within 90 days of the adoption of this Order. The report shall contain a requirement-by-requirement analysis based on acceptable engineering practices, of how the physical design and operation of the dairy waste disposal facilities under the control of Konyon Dairy will ensure compliance with the waste discharge requirements. The report shall be prepared and signed by a civil engineer licensed in the State of California."

This Report is needed to ensure the disposal of the dairy wastes, such as corral and manure stockpile runoff conforms with Order No. 84-05.

Furthermore, we note that there is no evidence that Konyn Dairy has any facilities to prevent the discharge of corral or calf-raising facility runoff and manure stockpile runoff to either surface waters or lands beyond the dairy property limits. Under these circumstances, we find the Waste Management Report to be reasonable.

### III. CONCLUSIONS

1. The Regional Board has acted appropriately in naming Konyn Dairy, TMY Farms and the City of San Diego in the waste discharge requirements.

2. Possible or threatened discharge of wastes from the Konyn Dairy include milk barn washwater, discharge from a calf-raising operation, manure pile runoff and corral runoff. While TMY Farms has the responsibility for the legal disposal of the wastewater collected in milk barn area, Konyn Dairy is properly named in the Regional Board Order as being responsible for managing all other dairy wastes.

3. As the generator of waste, Konyn Dairy was properly named as having responsibility for monitoring the characteristics of dairy wastes such as corral runoff, milk barn washwater, and discharge from the calf-raising facility. It was also appropriate to require Konyn Dairy to submit technical reports as to how it will manage corral runoff and manure stockpile runoff.

4. The Regional Board is presently exercising responsibility for any off-site monitoring.

### IV. ORDER

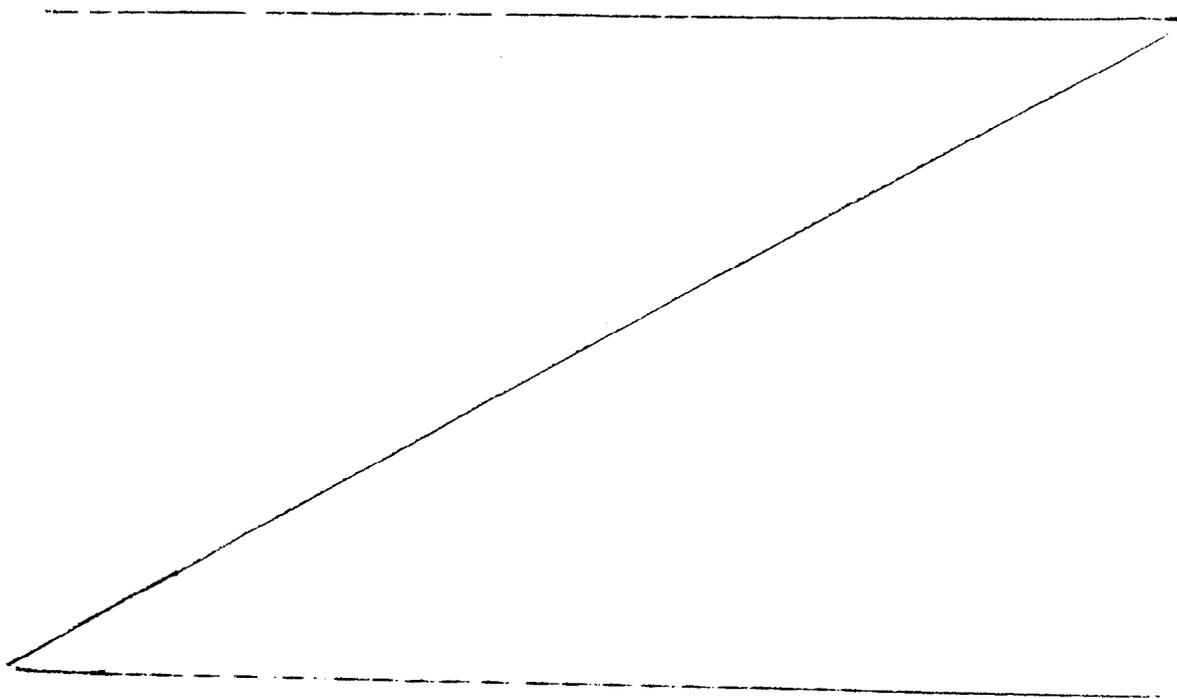
1. Prohibition I.B. of Order No. 84-05 is amended to delete the words "milk barn washwater" in 1-6 and to substitute in their place the words "wastewater collected in the milk barn area".

2. Footnote No. 1 of Order No. 84-05 is amended to read:

Wastewater shall include but not be limited to any precipitation (rain or snow) which comes in contact with corral area and stockpile manure except that the Konyon Dairy is not responsible for existing adjacent corral runoff that drains to and is collected in the milk barn area.

3. Footnote No. 3 of Order No. 84-05 is amended to read:

Wastewater collected in the milk barn area shall include all water used in cow washing, equipment and barn washdown, and feed ramp flushing, together with existing adjacent corral runoff, that is discharged via the pipe from the milk barn to TMY property.



4. If the Regional Board decides in the future to cease its responsibility for off-site monitoring, it must reconsider who is responsible for such provisions.

V. CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 19, 1985.

Aye: Raymond V. Stone, Chairman  
Darlene E. Ruiz, Vice Chairwoman  
E. H. Finster, Member  
Eliseo M. Samaniego, Member

No: None

Absent: None

Abstain: None

  
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Raymond Walsh  
Interim Executive Director